

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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DELANIE BUTLER, et al.,

Case No. 2:20-CV-861 JCM (EJY)

**Plaintiff(s),**

## ORDER

V.

PORTRFOLIO RECOVERY ASSOCIATES,  
LLC,

Defendant(s).

Presently before the court is plaintiffs Delanie Butler and John Robinson's (collectively, "plaintiffs") and defendant Portfolio Recovery Associates, LLC's ("defendant") joint response to the court's order to show cause (ECF No. 53). (ECF No. 54).

## I. BACKGROUND

On May 12, 2020, plaintiffs pleaded a 29 U.S.C. 2101 WARN Act claim, a 29 U.S.C. 201 FLSA claim, a NRS 608.016 unpaid wages claim, and a NRS 608.018 unpaid overtime claim. (ECF No. 1 at 11–14). Plaintiffs specifically pleaded the FLSA and NRS claims for the hourly worker class members and their class representative, Butler. (ECF No. 1 at ¶¶ 94–113).

On July 31, 2020, pursuant to the parties' stipulation (ECF No. 23), the court severed and transferred the FLSA claim, the NRS unpaid overtime claim, and the NRS unpaid wages claims brought by the hourly employees. (ECF No. 24). However, also pursuant to the parties' stipulation (ECF No. 23), the court specifically retained the WARN Act claim and the NRS unpaid wages claim on behalf of the salaried employees. (ECF No. 24).

After engaging in mediation, the parties filed a joint motion for preliminary approval of class action settlement. (ECF No. 52). Upon review of the proposed settlement agreement, the

1 court found potentially dispositive errors and ordered the parties to show cause as to why the  
 2 court should not dismiss their joint motion. (ECF No. 53). The parties now file a joint response  
 3 to that order, proposing changes to remedy the court's concerns with their original motion. (ECF  
 4 No. 54).

5 **II. DISCUSSION**

6 In its order to show cause, the court identified issues with the parties' proposed  
 7 settlement agreement concerning commonality, adequacy of representation, and fairness. (ECF  
 8 No. 53). Fundamental to the court's concerns was the unpled, but specifically retained, claim for  
 9 unpaid wages on behalf of the salaried employee class members. (*Id.*; *see* ECF Nos. 23, 24).

10 The parties propose several remedies to address the court's concerns. First, the parties  
 11 propose stipulating to dismiss the unpled, but specifically retained, salaried wage claims without  
 12 prejudice. (ECF No. 54 at 4–5). Second, the parties propose stipulating to amend the "clerical  
 13 error" in ECF Nos. 23 and 24 from asserting a claim under Nevada Revised Statute 608.016 to  
 14 the proper Nevada Revised Statutes, 608.0197 and 608.020. (*Id.* at 5). Third, the parties propose  
 15 amending their jointly proposed settlement agreement and all attached exhibits to clarify that the  
 16 class members are releasing only potential WARN act claims, not unpaid salary claims. (*Id.*).  
 17 Finally, the parties propose amending their jointly proposed settlement agreement and all  
 18 attached exhibits to better represent the share of the settlement disbursement allocated to salaried  
 19 employees and hourly employees. (*Id.*).

20 The parties' second proposed stipulation and order amending the severance would  
 21 remove the unpled salaried employee claims from the docket entirely. Thus, the parties need not  
 22 specifically dismiss the unpled claims from this matter. Accordingly, the court DENIES the  
 23 parties' request to dismiss the unpled claims and GRANTS the parties' request for leave to file a  
 24 stipulation and proposed order amending the "clerical errors" in ECF No. 23 and 24 relating to  
 25 the salaried employees' unpaid wages claims.

26 The court notes without holding that the parties' proposed amendments to their proposed  
 27 settlement agreement do address the court's concerns with the agreement. Thus, the court  
 28 GRANTS the parties' request for leave to amend their joint motion to approve class settlement.

1           **III. CONCLUSION**

2           Accordingly,

3           IT IS HEREBY ORDERED that the parties have 30 days from this order to 1) prepare  
4           and file a stipulation and order to fix the clerical errors in ECF No. 23 and ECF No. 24, and 2)  
5           amend their joint motion for preliminary approval of class action settlement and all attached  
6           exhibits. Failure to comply with this order will result in denial of the parties' joint motion to  
7           approve class action settlement (ECF No. 52).

8           DATED October 18, 2021.

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11           UNITED STATES DISTRICT JUDGE

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